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**SUBSTITUTE HOUSE BILL 3103**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By House Education (originally sponsored by Representative Darneille)**

READ FIRST TIME 02/05/08.

1            AN ACT Relating to crimes that require dismissal or certificate  
2 revocation for school employees; amending RCW 28A.400.320, 28A.400.330,  
3 28A.405.470, 28A.410.090, 28A.410.110, 9.96A.020, and 43.43.845; adding  
4 a new section to chapter 28A.400 RCW; adding a new section to chapter  
5 28A.405 RCW; adding a new section to chapter 41.59 RCW; and adding a  
6 new section to chapter 41.56 RCW.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** A new section is added to chapter 28A.400  
9 RCW to read as follows:

10            (1) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),  
11 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or  
12 conviction occurring after July 23, 1989, and before the effective date  
13 of this section, for any of the following felony crimes:

14            (a) Any felony crime involving the physical neglect of a child  
15 under chapter 9A.42 RCW;

16            (b) The physical injury or death of a child under chapter 9A.32 or  
17 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

18            (c) Sexual exploitation of a child under chapter 9.68A RCW;

1 (d) Sexual offenses under chapter 9A.44 RCW where a minor is the  
2 victim;

3 (e) Promoting prostitution of a minor under chapter 9A.88 RCW;

4 (f) The sale or purchase of a minor child under RCW 9A.64.030;

5 (g) Violation of laws of another jurisdiction that are similar to  
6 those specified in (a) through (f) of this subsection.

7 (2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3),  
8 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or  
9 conviction occurring on or after the effective date of this section,  
10 for any of the following felony crimes or attempts, conspiracies, or  
11 solicitations to commit any of the following felony crimes:

12 (a) A felony violation of RCW 9A.88.010, indecent exposure;

13 (b) A felony violation of chapter 9A.42 RCW involving physical  
14 neglect;

15 (c) A felony violation of chapter 9A.32 RCW;

16 (d) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2;  
17 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or  
18 any other felony violation of chapter 9A.36 RCW involving physical  
19 injury except assault 3 where the victim is eighteen years of age or  
20 older;

21 (e) A sex offense as defined in RCW 9.94A.030;

22 (f) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030,  
23 kidnapping 2;

24 (g) A violation of RCW 9A.64.030, child selling or child buying;

25 (h) A violation of RCW 9A.88.070, promoting prostitution 1;

26 (i) A violation of RCW 9A.56.200, robbery 1; or

27 (j) A violation of laws of another jurisdiction that are similar to  
28 those specified in (a) through (i) of this subsection.

29 **Sec. 2.** RCW 28A.400.320 and 1990 c 33 s 383 are each amended to  
30 read as follows:

31 (1) The school district board of directors shall immediately  
32 terminate the employment of any classified employee who has contact  
33 with children during the course of his or her employment upon a guilty  
34 plea or conviction of any felony crime (~~((involving the physical neglect~~  
35 ~~of a child under chapter 9A.42 RCW, the physical injury or death of a~~  
36 ~~child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations~~  
37 ~~under chapter 46.61 RCW), sexual exploitation of a child under chapter~~

1 ~~9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~  
2 ~~victim, promoting prostitution of a minor under chapter 9A.88 RCW, the~~  
3 ~~sale or purchase of a minor child under RCW 9A.64.030, or violation of~~  
4 ~~similar laws of another jurisdiction)) specified under section 1 of  
5 this act.~~

6 (2) The employee shall have a right of appeal under chapter 28A.645  
7 RCW including any right of appeal under a collective bargaining  
8 agreement.

9 **Sec. 3.** RCW 28A.400.330 and 1989 c 320 s 4 are each amended to  
10 read as follows:

11 The school district board of directors shall include in any  
12 contract for services with an entity or individual other than an  
13 employee of the school district a provision requiring the contractor to  
14 prohibit any employee of the contractor from working at a public school  
15 who has contact with children at a public school during the course of  
16 his or her employment and who has pled guilty to or been convicted of  
17 any felony crime (~~(involving the physical neglect of a child under~~  
18 ~~chapter 9A.42 RCW, the physical injury or death of a child under~~  
19 ~~chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under~~  
20 ~~chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A~~  
21 ~~RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~  
22 ~~victim, promoting prostitution of a minor under chapter 9A.88 RCW, the~~  
23 ~~sale or purchase of a minor child under RCW 9A.64.030, or violation of~~  
24 ~~similar laws of another jurisdiction)) specified under section 1 of  
25 this act. The contract shall also contain a provision that any failure  
26 to comply with this section shall be grounds for the school district  
27 immediately terminating the contract.~~

28 **Sec. 4.** RCW 28A.405.470 and 1990 c 33 s 405 are each amended to  
29 read as follows:

30 The school district shall immediately terminate the employment of  
31 any person whose certificate or permit authorized under chapter 28A.405  
32 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(~~(+2)~~)  
33 (3) upon a guilty plea or conviction of any felony crime (~~(involving~~  
34 ~~the physical neglect of a child under chapter 9A.42 RCW, the physical~~  
35 ~~injury or death of a child under chapter 9A.32 or 9A.36 RCW (except~~  
36 ~~motor vehicle violations under chapter 46.61 RCW), sexual exploitation~~

1 ~~of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44~~  
2 ~~RCW where a minor is the victim, promoting prostitution of a minor~~  
3 ~~under chapter 9A.88 RCW, the sale or purchase of a minor child under~~  
4 ~~RCW 9A.64.030, or violation of similar laws of another jurisdiction))~~  
5 specified under section 1 of this act. Employment shall remain  
6 terminated unless the employee successfully prevails on appeal. This  
7 section shall only apply to employees holding a certificate or permit  
8 who have contact with children during the course of their employment.

9 **Sec. 5.** RCW 28A.410.090 and 2005 c 461 s 2 are each amended to  
10 read as follows:

11 (1)(a) Any certificate or permit authorized under the provisions of  
12 this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may  
13 be revoked or suspended by the authority authorized to grant the same  
14 based upon a criminal records report authorized by law, or upon the  
15 complaint of any school district superintendent, educational service  
16 district superintendent, or private school administrator for  
17 immorality, violation of written contract, unprofessional conduct,  
18 intemperance, or crime against the law of the state. School district  
19 superintendents, educational service district superintendents, or  
20 private school administrators may file a complaint concerning any  
21 certificated employee of a school district, educational service  
22 district, or private school and this filing authority is not limited to  
23 employees of the complaining superintendent or administrator.

24 (b) If the superintendent of public instruction has reasonable  
25 cause to believe that an alleged violation of this chapter or rules  
26 adopted under it has occurred based on a written complaint alleging  
27 physical abuse or sexual misconduct by a certificated school employee  
28 filed by a parent or another person, but no complaint has been  
29 forwarded to the superintendent by a school district superintendent,  
30 educational service district superintendent, or private school  
31 administrator, and that a school district superintendent, educational  
32 service district superintendent, or private school administrator has  
33 sufficient notice of the alleged violation and opportunity to file a  
34 complaint, the superintendent of public instruction may cause an  
35 investigation to be made of the alleged violation, together with such  
36 other matters that may be disclosed in the course of the investigation  
37 related to certificated personnel.

1 (2) A parent or another person may file a written complaint with  
2 the superintendent of public instruction alleging physical abuse or  
3 sexual misconduct by a certificated school employee if:

4 (a) The parent or other person has already filed a written  
5 complaint with the educational service district superintendent  
6 concerning that employee;

7 (b) The educational service district superintendent has not caused  
8 an investigation of the allegations and has not forwarded the complaint  
9 to the superintendent of public instruction for investigation; and

10 (c) The written complaint states the grounds and factual basis upon  
11 which the parent or other person believes an investigation should be  
12 conducted.

13 (3)(a) Any such certificate or permit authorized under this chapter  
14 or chapter 28A.405 RCW shall be revoked by the authority authorized to  
15 grant the certificate upon a guilty plea or the conviction of any  
16 felony crime (~~((involving the physical neglect of a child under chapter  
17 9A.42 RCW, the physical injury or death of a child under chapter 9A.32  
18 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61  
19 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual  
20 offenses under chapter 9A.44 RCW where a minor is the victim, promoting  
21 prostitution of a minor under chapter 9A.88 RCW, the sale or purchase  
22 of a minor child under RCW 9A.64.030, or violation of similar laws of  
23 another jurisdiction)) specified under section 1 of this act, in  
24 accordance with this section.~~ The person whose certificate is in  
25 question shall be given an opportunity to be heard.

26 (b) Mandatory permanent revocation upon a guilty plea or the  
27 conviction of felony crimes specified under (~~(this subsection))~~ section  
28 1(1) of this act shall apply to such convictions or guilty pleas which  
29 occur after July 23, 1989, and before the effective date of section 1  
30 of this act.

31 (c) Mandatory permanent revocation upon a guilty plea or conviction  
32 of felony crimes specified under section 1(2) of this act shall apply  
33 to such convictions or guilty pleas that occur on or after the  
34 effective date of section 1 of this act.

35 (d) Revocation of any certificate or permit authorized under this  
36 chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction  
37 of a crime specified under section 1 of this act occurring prior to

1 July 23, 1989, shall be subject to the provisions of subsection (1) of  
2 this section.

3 (4)(a) Any such certificate or permit authorized under this chapter  
4 or chapter 28A.405 RCW shall be suspended or revoked, according to the  
5 provisions of this subsection, by the authority authorized to grant the  
6 certificate upon a finding that an employee has engaged in an  
7 unauthorized use of school equipment to intentionally access material  
8 depicting sexually explicit conduct or has intentionally possessed on  
9 school grounds any material depicting sexually explicit conduct; except  
10 for material used in conjunction with established curriculum. A first  
11 time violation of this subsection shall result in either suspension or  
12 revocation of the employee's certificate or permit as determined by the  
13 office of the superintendent of public instruction. A second violation  
14 shall result in a mandatory revocation of the certificate or permit.

15 (b) In all cases under this subsection (4), the person whose  
16 certificate is in question shall be given an opportunity to be heard  
17 and has the right to appeal as established in RCW 28A.410.100.  
18 Certificates or permits shall be suspended or revoked under this  
19 subsection only if findings are made on or after July 24, 2005. For  
20 the purposes of this subsection, "sexually explicit conduct" has the  
21 same definition as provided in RCW 9.68A.011.

22 (5) Any such certificate or permit authorized under this chapter or  
23 chapter 28A.405 RCW shall be revoked by the authority authorized to  
24 grant the certificate upon a finding that the certificate holder  
25 obtained the certificate through fraudulent means, including fraudulent  
26 misrepresentation of required academic credentials or prior criminal  
27 record. In all cases under this subsection, the person whose  
28 certificate is in question shall be given an opportunity to be heard  
29 and has the right to appeal as established in RCW 28A.410.100.  
30 Certificates or permits shall be revoked under this subsection only if  
31 findings are made on or after the effective date of this section.

32 **Sec. 6.** RCW 28A.410.110 and 1990 c 33 s 410 are each amended to  
33 read as follows:

34 In case any certificate or permit authorized under this chapter or  
35 chapter 28A.405 RCW is revoked, the holder shall not be eligible to  
36 receive another certificate or permit for a period of twelve months  
37 after the date of revocation. However, if the certificate or permit

1 authorized under this chapter or chapter 28A.405 RCW was revoked  
2 because of a guilty plea or the conviction of a felony crime  
3 (~~involving the physical neglect of a child under chapter 9A.42 RCW,~~  
4 ~~the physical injury or death of a child under chapter 9A.32 or 9A.36~~  
5 ~~RCW (except motor vehicle violations under chapter 46.61 RCW), sexual~~  
6 ~~exploitation of a child under chapter 9.68A RCW, sexual offenses under~~  
7 ~~chapter 9A.44 RCW where a minor is the victim, promoting prostitution~~  
8 ~~of a minor under chapter 9A.88 RCW, the sale or purchase of a minor~~  
9 ~~child under RCW 9A.64.030, or violation of similar laws of another~~  
10 ~~jurisdiction)) specified under section 1 of this act, the certificate  
11 or permit shall not be reinstated.~~

12 **Sec. 7.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read  
13 as follows:

14 (1) Subject to the exceptions in subsections (3) and (4) of this  
15 section, and unless there is another provision of law to the contrary,  
16 a person is not disqualified from employment by the state of Washington  
17 or any of its counties, cities, towns, municipal corporations, or  
18 quasi-municipal corporations, nor is a person disqualified to practice,  
19 pursue or engage in any occupation, trade, vocation, or business for  
20 which a license, permit, certificate or registration is required to be  
21 issued by the state of Washington or any of its counties, cities,  
22 towns, municipal corporations, or quasi-municipal corporations solely  
23 because of a prior conviction of a felony. However, this section does  
24 not preclude the fact of any prior conviction of a crime from being  
25 considered.

26 (2) A person may be denied employment by the state of Washington or  
27 any of its counties, cities, towns, municipal corporations, or quasi-  
28 municipal corporations, or a person may be denied a license, permit,  
29 certificate or registration to pursue, practice or engage in an  
30 occupation, trade, vocation, or business by reason of the prior  
31 conviction of a felony if the felony for which he or she was convicted  
32 directly relates to the position of employment sought or to the  
33 specific occupation, trade, vocation, or business for which the  
34 license, permit, certificate or registration is sought, and the time  
35 elapsed since the conviction is less than ten years. However, for  
36 positions in the county treasurer's office, a person may be

1 disqualified from employment because of a prior guilty plea or  
2 conviction of a felony involving embezzlement or theft, even if the  
3 time elapsed since the guilty plea or conviction is ten years or more.

4 (3) A person is disqualified for any certificate required or  
5 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
6 guilty plea or the conviction of a felony (~~((involving sexual  
7 exploitation of a child under chapter 9.68A RCW, sexual offenses under  
8 chapter 9A.44 RCW where a minor is the victim, promoting prostitution  
9 of a minor under chapter 9A.88 RCW, or a violation of similar laws of  
10 another jurisdiction))~~) crime specified under section 1 of this act,  
11 even if the time elapsed since the guilty plea or conviction is ten  
12 years or more.

13 (4) A person is disqualified from employment by school districts,  
14 educational service districts, and their contractors hiring employees  
15 who will have regularly scheduled unsupervised access to children,  
16 because of a prior guilty plea or conviction of a felony (~~((involving  
17 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
18 under chapter 9A.44 RCW where a minor is the victim, promoting  
19 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
20 similar laws of another jurisdiction))~~) crime specified under section 1  
21 of this act, even if the time elapsed since the guilty plea or  
22 conviction is ten years or more.

23 (5) Subsections (3) and (4) of this section (~~((only))~~) as they  
24 pertain to felony crimes specified under section 1(1) of this act apply  
25 to a person applying for a certificate or for employment on or after  
26 July 25, 1993, and before the effective date of section 1 of this act.  
27 Subsections (3) and (4) of this section as they pertain to all felony  
28 crimes specified under section 1(2) of this act apply to a person  
29 applying for a certificate or for employment on or after the effective  
30 date of section 1 of this act.

31 **Sec. 8.** RCW 43.43.845 and 2006 c 263 s 828 are each amended to  
32 read as follows:

33 (1) Upon a guilty plea or conviction of a person of any felony  
34 crime (~~((involving the physical neglect of a child under chapter 9A.42  
35 RCW, the physical injury or death of a child under chapter 9A.32 or  
36 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),  
37 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~

1 under chapter 9A.44 RCW, promoting prostitution of a minor under  
2 chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW  
3 9A.64.030)) specified under section 1 of this act, the prosecuting  
4 attorney shall notify the state patrol of such guilty pleas or  
5 convictions.

6 (2) When the state patrol receives (~~information that a person has~~  
7 ~~pled guilty to or been convicted of one of the felony crimes~~) the  
8 notice required under subsection (1) of this section, the state patrol  
9 shall transmit that information to the superintendent of public  
10 instruction. It shall be the duty of the superintendent of public  
11 instruction, on at least a quarterly basis, to identify whether the  
12 person holds a certificate or permit issued under chapters 28A.405 and  
13 28A.410 RCW or is employed by a school district, and provide this  
14 information to the Washington professional educator standards board and  
15 the school district employing the (~~individual who pled guilty or was~~  
16 ~~convicted of the crimes identified in subsection (1) of this section~~)  
17 person.

18 NEW SECTION. Sec. 9. A new section is added to chapter 28A.405  
19 RCW to read as follows:

20 (1) A school district superintendent shall immediately notify the  
21 office of the superintendent of public instruction when the district  
22 terminates the employment contract of a certificated employee on the  
23 basis of probable cause for termination.

24 (2) The office of the superintendent of public instruction shall  
25 maintain a record of the notices received under this section.

26 (3) This section applies only to employees holding a certificate or  
27 permit authorized under this chapter or chapter 28A.410 RCW who have  
28 contact with children during the course of their employment.

29 NEW SECTION. Sec. 10. A new section is added to chapter 41.59 RCW  
30 to read as follows:

31 Nothing in this chapter may be construed to grant employers or  
32 employees the right to reach agreements that are in conflict with the  
33 termination provisions of RCW 28A.405.470.

34 NEW SECTION. Sec. 11. A new section is added to chapter 41.56 RCW  
35 to read as follows:

1           Nothing in this chapter may be construed to grant school district  
2 employers or classified school district employees the right to reach  
3 agreements that are in conflict with the termination provisions of  
4 28A.400.320.

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